

EXCERPTS OF I-695 RULING  
DELIVERED IN OPEN COURT ON MARCH 14, 2000

Initiative 695 was affirmed in 1999 by a significant margin of the direct popular vote in virtually all areas of the State of Washington.

Its constitutional validity and its reach are now being vigorously questioned. These legal challenges, which raise questions fundamental to a democracy, were filed in several counties by citizens and by public and private entities alike. They have been consolidated in this Court for resolution.

The United States and its individual states have long been guided by the adage that we citizens have a government of laws and not of men. In accordance with this cherished principle, court rulings must be made by reference to law and not upon personal whim. A judicial ruling on the validity and reach of a legislative act passed by an elected legislature, or of an initiative or referendum passed directly by the citizenry, is controlled by constitutional law.

Wherever we citizens fall on the political spectrum and whatever our views on any given issue, we all agree that the touchstone is the Constitution. For example, one citizen may challenge a particular act or law on the grounds that it violates his or her right to bear arms under the Second Amendment. Another citizen may contest yet another act or law on the grounds that it violates his or her free speech rights under the First Amendment. As citizens, we may and frequently do disagree on specific policies. Nonetheless, our agreement as citizens on a single point of reference, the Constitution, keeps American democracy healthy and viable.

Depending upon the issue involved, courts are required to refer either to the United States Constitution or to the Constitution of their particular state, or to both.

Because this set of cases involves the structure of the democracy established in the State of Washington, the questions presented for decision today are governed by our State Constitution.

The Constitution of the State of Washington was drafted in keeping with the legal traditions of the United States, which find many of their origins in the American Revolution. One of the central cries leading to the American Revolution was “No taxation without representation!” Echoes of that revolutionary spirit are found in the passage of Initiative 695.

However, there is a vital distinction which commands brief discussion. The early revolutionary

EXCERPTS OF I-695 RULING  
DELIVERED IN OPEN COURT  
ON MARCH 14, 2000

1 slogan expressed the sentiment that citizens wanted no taxation unless they were *represented* in  
2 the body that imposed the taxes. That is, we were establishing a *representative* democracy. In a  
3 representative democracy, citizens delegate authority to their elected representatives --  
4 legislative, executive and judicial -- to decide certain questions on behalf of the citizenry. A  
5 representative democracy does not contemplate, let alone necessitate, a direct vote of the citizens  
6 on every act of the government, whether it be an act imposing, enforcing or collecting a tax, or  
7 some other governmental act.

8 In contrast to the representative democracies established after the Revolution, a *direct*  
9 democracy is one whose structure not only permits but requires a direct vote of the citizenry on  
10 every act of its government. No state has such a government in its purest form. However, in the  
11 early 1900's there was a strong populist movement in Washington and in other states which  
12 sought to permit direct participation in the government on those occasions when a sufficient  
13 number of citizens wanted such participation. These populist movements established the right of  
14 the citizenry in more than twenty states to more direct participation by passing constitutional  
15 amendments that permitted citizens to file and vote on initiatives and referenda. The State of  
16 Washington is one of those states. As a result, the State of Washington now has a democracy  
17 whose structure has both representative and direct elements. Both elements of our democracy,  
18 direct and representative, are established by and are subject to the terms of our State Constitution.

19 The government of the State of Washington remains primarily *representative*. The *direct*  
20 participation of citizens in legislative activity is contemplated on those occasions when the  
21 citizenry affirmatively so chooses, in keeping with either the Constitution's initiative process or  
22 its referendum process.

23 In order to deal properly with the constitutional challenges raised to Initiative 695, one  
24 must keep in mind the distinctions between the representative and the direct elements of our  
25 democracy, and the manner in which these two elements interact under our State Constitution.

26 The first challenge to Initiative 695 addressed by the Court arises under Article II, Section  
27 1 of the State Constitution. Plaintiffs contend that Section 2 of the Initiative establishes an  
28 unconstitutional referendum process, while defendants argue that it is an initiative which  
29 establishes conditional legislation and not referenda. Article II, Section 1 of the State

1 Constitution was amended during the populist movements of the early 1900's in order to  
2 establish the right of the citizens to propose and enact initiatives and referenda.

3 The right to submit initiatives is the right of citizens to propose specific legislation and  
4 vote it into law despite inaction or even opposition by their elected representatives in the  
5 legislature. An initiative is essentially an affirmative act. Initiatives may cover any legislative  
6 subject without any limitation as to subject matter except for the prohibition on amending the  
7 State Constitution by statute.

8 In contrast, a referendum is a negative act, essentially a citizens' veto. The referendum  
9 right permits citizens to challenge acts or laws that have been passed by their elected  
10 representatives. Citizens first identify a particular act or law to be challenged, and thereafter vote  
11 to specifically accept or reject that act or law. As a matter of procedure, when a referendum is  
12 called for in keeping with the Constitution, the act or law being challenged is immediately  
13 suspended until that public vote has been held.

14 Initiative 695 is an initiative.

15 The \$30 limit proposed in Section 1, i.e., the limit on the State's portion of the Motor  
16 Vehicle Excise Tax (the "MVET") is proper subject matter for an initiative. It is a legislative  
17 subject. The repealers listed in Section 3 are likewise legislative subjects.

18 However, Section 2 of Initiative 695 performs a function different from that of Sections 1  
19 or 3. Section 2, as drafted, would address every tax, fee or charge enacted, continued, expanded  
20 or reenacted by any government agency at any time in the future. In that capacity, it would  
21 automatically suspend in the future every such tax-related action of every level of government  
22 until the citizens have voted to approve or disapprove of the particular action. It would be  
23 universal. It would be a presumptive veto.

24 Section 2 is conceptually distinct from Section 1 of the Initiative. Section 1 suspended  
25 nothing, but immediately upon the effective date of the Act, affirmatively enacted specific  
26 changes in the amount, structure and distribution of one particular tax. Section 2 established a  
27 referendum.

28 For the reasons set forth in greater detail in the written ruling entered today, the Court has  
29 ruled as follows on this first challenge:

- Section 2 of the Initiative is unconstitutional because it mandates universal referenda without complying with the Constitution's four percent requirement.
- Section 2 of the Initiative is unconstitutional because it mandates universal referenda on laws and acts necessary for the support of the State government and its existing institutions.
- Section 2 of the Initiative is unconstitutional because it seeks to amend the Constitution without complying with the requirements of Amendment XXIII to the Constitution.

The next challenge to the Initiative arises under Article II, Section 19 of the State Constitution. Section 19 sets forth the following requirements for all laws, whether they are proposed by the legislature or by the citizens:

No bill shall embrace more than one subject, and that shall be expressed in the title.

The first clause of Section 19 is simple and direct. It requires that each proposed law deal with only one subject.

The central issue to be resolved in determining whether a proposed law covers more than one subject is whether there is a "rational unity" among the provisions of the proposed law. Does one provision naturally imply the other? Is either provision naturally included within or subsumed by the other?

Sections 1 and 3 of Initiative 695 deal with *what* the State may charge for its portion of a car license. Section 2 deals with *how* any tax or fee of any nature whatsoever at any level of state government may become effective at any time in the future. A law limiting the dollar amount of the State's portion of the car tab does not, standing alone, logically imply or include, let alone require, an overhaul of the manner of imposing or avoiding future tax changes at every other level and for every other function of local, county and State government. Likewise, if one starts the analysis from the point of view of Section 2, passing a law setting new standards for the holding of tax-related referenda does not logically imply, include or require either a \$30 or any other particular limit on car tab fees or other specific tax.

Is there a rational link between these sections? Yes. Is there rational unity? No. A rational *link* is not the same as rational *unity*. Initiative 695 picked two particular aspects of the tax laws to address, out of many state tax laws. The Initiative relates to *two* distinct and specific

1 subjects, first the *what* of a single tax (the MVET), and second the *how* of every other future tax,  
2 fee and charge by state government.

3 For the reasons set forth in greater detail in the written ruling entered today, the Court has  
4 ruled as follows on the second challenge:

- 5 • The Initiative as a whole violates the Constitution because it covers more than  
6 one subject.

7  
8 The next challenge to the Initiative arises under the second clause of Article II, Section 19  
9 of the State Constitution:

10 No bill shall embrace more than one subject, and that shall be expressed in the title.  
11 That second clause requires that the subject of the law be directly and clearly expressed in its  
12 title, so that citizens will know what they are voting for.

13 For the reasons set forth in greater detail in the written ruling entered today, the Court has  
14 ruled as follows on the third challenge:

- 15 • Sections 2 and 3 of the Initiative violate the Constitution because not all  
16 subjects in their text are identified in the Ballot Title.

17 The fourth challenge arises under Article II, Section 37 of the State Constitution, which  
18 reads as follows:

19 No act shall ever be revised or amended by mere reference to its title, but the act revised  
20 or the section amended shall be set forth at full length.

21 Article II, Section 37 requires that the full text of any act or section being amended be set forth in  
22 full in order to avoid any confusion or ambiguity as to both the meaning of the new law and its  
23 impact on existing law, to identify the extent of revision contemplated or achieved by the  
24 amendment.

25 For the reasons set forth in greater detail in the written ruling entered today, the Court has  
26 ruled as follows on the fourth challenge:

- 27 • The Initiative as a whole violates the Constitution because it is not a complete  
28 Act, and neither sets forth the text of those other laws that it necessarily  
29 amends nor explains how those amendments are worded or would be  
implemented.

1  
2 There are additional challenges to I-695. These include detailed interpretive issues,  
3 further constitutional issues relating to gifts of public property, surrender of the legislative taxing  
4 powers, modification of municipal authority and impairment of contract, and issues such as  
5 federal preemption. In light of the Court's foregoing rulings, it is not necessary to address those  
6 additional challenges. Because the Initiative is unconstitutional, further rulings would be merely  
7 advisory.

8 When reviewing any law's constitutionality, a court is to interpret a law in such a way as  
9 to preserve its constitutionality, so long as that can be done without reaching absurd results. The  
10 only way Initiative 695 could be constitutional would be for the Court to arbitrarily eliminate one  
11 or more sections and redraft others. Courts are not to engage in the legislative activity of  
12 rewriting an initiative in an attempt to make an otherwise unconstitutional law constitutional.

13 Based on the conclusions of law set forth above, the Court now grants relief as follows in  
14 all seven of the cases:

15 1. This Court declares and orders that

- 16 (a) Section 2 of Initiative 695 is unconstitutional and void and therefore cannot be  
17 enforced; the State and its subdivisions are hereby enjoined from taking any  
18 action to implement or enforce Section 2; other statutes, codes and ordinances  
19 requiring, permitting or otherwise governing voter participation remain in place  
20 and are not affected by this order;  
21 (b) Sections 1 and 3 of Initiative 695 are unconstitutional; injunctive relief is denied  
22 because the State has been implementing Sections 1 and 3 since January 1, 2000;  
23 it would be disruptive to enjoin their operation or enforcement before either the  
24 Supreme Court has issued its final rulings as to their constitutionality or a period  
25 of thirty days has passed from the date of this ruling without appeal; denying  
26 injunctive relief as to Sections 1 and 3 preserves the status quo pending  
27 completion of this litigation.

28 2. This Court certifies the foregoing rulings as final judgments under CR 54(b).

29 FULL WRITTEN TEXT OF THE I-695 RULINGS MAY BE ACCESSED AT

[www.courts.wa.gov](http://www.courts.wa.gov)